



[4830-01-p]

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9650]

RIN 1545-BK67; RIN 1545-BK91

Definitions and Reporting Requirements for Shareholders of Passive Foreign Investment Companies; Insurance Income of a Controlled Foreign Corporation for Taxable Years Beginning After December 31, 1986

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance on determining ownership of a passive foreign investment company ("PFIC") and on the annual filing requirements for shareholders of PFICs. These temporary regulations primarily affect shareholders of PFICs that do not currently file Form 8621, "Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund," with respect to their PFIC interests. In addition, these temporary regulations provide guidance on an exception to the requirement for certain shareholders of foreign corporations to file Form 5471, "Information Return of U.S. Persons with Respect to Certain Foreign Corporations." These regulations also update certain rules related to Form 5471 to take into account statutory changes. The text of these temporary regulations also serves as the text of the proposed regulations (REG-140974-11) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective on **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**.

Applicability Date: For dates of applicability, see §§1.1291-1T(k), 1.1291-9T(k)(3), 1.1298-1T(h), 1.6038-2T(m), and 1.6046-1T(l)(3).

FOR FURTHER INFORMATION CONTACT: Barbara E. Rasch or Susan E. Massey at (202) 317-6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

## **Background**

### **A. Sections 1291 and 1298**

Sections 1291 through 1298 of the Internal Revenue Code (“Code”) set forth three tax regimes for shareholders that own stock of a PFIC: (i) the excess distribution rules under section 1291 (“section 1291 regime”); (ii) the qualified electing fund (“QEF”) rules under section 1293; and (iii) the mark to market (“MTM”) rules under section 1296. In general, section 1291 imposes a special tax and interest charge on a United States person that is a shareholder of a PFIC and that receives an excess distribution (within the meaning of section 1291(b)) from a PFIC or recognizes gain derived from a disposition of stock in a PFIC that is treated as an excess distribution (within the meaning of section 1291(a)(2)). A shareholder that is subject to the QEF rules includes amounts in gross income under section 1293, and a shareholder that is subject to the MTM rules includes amounts in gross income under section 1296. Section 1298 sets forth special rules applicable to shareholders of PFICs, including attribution rules that treat a United States person as the owner of PFIC stock that is owned by another person (other than an individual). For instance, section 1298(a)(2) sets forth the

attribution rules for ownership through a corporation, and section 1298(a)(3) sets forth the attribution rules for ownership through a partnership, estate, or trust. In addition, section 1298(a)(1)(B) provides that, pursuant to regulations, stock owned (or treated as owned) by a United States person may be treated as owned by another United States person.

On April 1, 1992, the **Federal Register** published proposed regulations (57 FR 11024) under sections 1291, 1293, 1295, and 1297 of the Code concerning, among other things, the taxation of shareholders of certain PFICs upon payment of distributions by such companies or upon disposition of the stock of such companies (“1992 proposed regulations”). The IRS and the Department of the Treasury (“Treasury Department”) received written comments on the 1992 proposed regulations and held a hearing on November 23, 1992.

Subsequently, the Taxpayer Relief Act of 1997 (Public Law 105-34, 111 Stat. 788) (“Taxpayer Relief Act”) modified certain aspects of the PFIC rules. Section 1122(a) of the Taxpayer Relief Act added the MTM regime under section 1296 to the Code, and section 1121 of the Taxpayer Relief Act added section 1297(d). Section 1297(d) provides that, in certain situations, a PFIC that is also a controlled foreign corporation (“CFC”) is not treated as a PFIC with respect to certain shareholders. However, section 1298(a)(2)(B) provides that a foreign corporation that would, but for the rules of section 1297(d), be a PFIC is treated as a PFIC with respect to its shareholders for purposes of determining whether the shareholders own an interest in any PFIC held by the foreign corporation.

Section 521 of the Hiring Incentives to Restore Employment Act of 2010 (Public Law 111-147, 124 Stat. 71) (“HIRE Act”) added new paragraph (f) to section 1298, effective March 18, 2010. Section 1298(f) requires a United States person that is a shareholder of a PFIC to file an annual report containing such information as the Secretary may require. The HIRE Act also amended section 6501(c)(8) (which was further amended by Public Law 111-226, 124 Stat. 2389) to extend the statute of limitations for assessment of tax for a shareholder that fails to comply with the reporting requirements of section 1298(f).

In Notice 2010-34 (2010-1 CB 612 (April 26, 2010)) (see 26 CFR §601.601(d)(2)(ii)(b)), the IRS and the Treasury Department announced that they were developing further guidance regarding the reporting obligations under section 1298(f) and that PFIC shareholders that were not otherwise required to file Form 8621 prior to March 18, 2010, would not be required to file an annual report under section 1298(f) for taxable years beginning before March 18, 2010.

In Notice 2011-55 (2011-29 CB 663 (July 18, 2011)) (see 26 CFR §601.601(d)(2)(ii)(b)), the IRS and the Treasury Department announced their intention to issue regulations under section 1298(f) and to release a revised Form 8621, modified to reflect the reporting requirements under section 1298(f). In addition, Notice 2011-55 suspended the section 1298(f) reporting requirements until the release of the revised Form 8621 for PFIC shareholders that were not otherwise required to file Form 8621 under the then-current Instructions to Form 8621. The notice stated that PFIC shareholders with Form 8621 reporting obligations as provided in the then-current Instructions to Form 8621 were required to continue filing Form 8621 with an income tax

or information return filed prior to the release of the revised Form 8621. Notice 2011-55 further provided that following the release of revised Form 8621, PFIC shareholders for which the filing of Form 8621 had been suspended under the notice would be required to attach Form 8621 for the suspended taxable year to their next income tax or information return required to be filed with the IRS. The notice also provided that a failure to furnish Form 8621 for a suspended taxable year could result in the extension of the statute of limitations for such year under section 6501(c)(8), and penalties could apply. However, since Notice 2011-55 was issued, the IRS and the Treasury Department have determined that it is not necessary for taxpayers to file a Form 8621 under section 1298(f) for suspended taxable years. Accordingly, these regulations provide that PFIC shareholders are not required to file Form 8621 under section 1298(f) with respect to taxable years ending before **INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER**.

This document contains amendments to 26 CFR part 1 under sections 1291 and 1298. Although comments were received on the 1992 proposed regulations, none relate to the specific issues addressed in these temporary regulations. These temporary regulations generally adopt certain portions of the 1992 proposed regulations, some of which are revised to take into account statutory changes. This preamble discusses these revisions but does not discuss comments concerning other rules in the 1992 proposed regulations, which are beyond the scope of these temporary regulations. These temporary regulations also set forth the filing requirements under section 1298(f), including the time and manner for filing Form 8621 for taxable years

ending on or after [INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE  
FEDERAL REGISTER].

B. Sections 6038 and 6046

This document contains amendments to 26 CFR part 1 under sections 6038 and 6046. Sections 6038 and 6046 set forth information return reporting requirements applicable to certain United States persons that own an interest in foreign corporations and certain United States persons that are officers and directors of the foreign corporations. These temporary regulations provide guidance on an exception to the requirement to file Form 5471 under sections 6038 and 6046 that is applicable to certain United States persons that own an interest in a foreign corporation under constructive ownership rules.

In addition, these regulations take into account statutory changes in section 1012(i) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647, 102 Stat. 3342) and section 1146(a) of the Taxpayer Relief Act. The first statutory change relates to the requirement for persons treated as United States shareholders under section 953(c) to file an information return under section 6046. This requirement was added to the Code in 1988, shortly after section 953(c) was added to the Code by the Tax Reform Act of 1986 (Public Law 99-514, 100 Stat. 2085). On April 17, 1991, the **Federal Register** published proposed regulations (56 FR 15540; INTL-939-86; REG-208289-86) under sections 953 and 6046 concerning, among other things, the requirements for persons treated as United States shareholders under section 953(c) to file an information return with respect to the CFC, and for certain United States persons that are officers and directors of such CFCs to file an information return (“1991

proposed regulations”). These regulations finalize §1.6046-1 of the 1991 proposed regulations (REG-116180-12; RIN 1545-BK91) without substantive changes. The other portions of the 1991 proposed regulations (REG-123286-13; RIN 1545-BL63) remain in proposed form.

The second statutory change relates to the ownership threshold for reporting set forth in section 6046. Prior to the modifications made by the Taxpayer Relief Act, the stock ownership threshold at which reporting was required under section 6046 was 5 percent. These regulations revise §1.6046-1 to reflect the 10 percent ownership threshold change that was made in the Taxpayer Relief Act. In addition, these regulations revise the examples to reflect the 10 percent ownership threshold.

Finally, these regulations revise §1.6046-1 to reflect the current name and form number of the information return required to be filed pursuant to section 6046.

## **Explanation of Provisions**

### **A. Section 1291**

#### **1. Definition of pedigreed QEF**

Prop. Treas. Reg. §1.1291-1(b)(2)(ii) of the 1992 proposed regulations defines the term pedigreed QEF, and §1.1291-9(j)(2)(ii) contains a similar definition of the term. Section 1.1291-1T(b)(2)(ii) adopts the 1992 proposed regulations’ definition of pedigreed QEF without substantive modification to be consistent with the definition of pedigreed QEF in §1.1291-9(j)(2)(ii). The definition of pedigreed QEF in the 1992 proposed regulations is withdrawn in this issue of the **Federal Register**.

#### **2. Definition of section 1291 fund**

Prop. Treas. Reg. §1.1291-1(b)(2)(v) of the 1992 proposed regulations defines the term section 1291 fund as an unpedigreed QEF or a nonqualified fund. These temporary regulations adopt the 1992 proposed regulations' definition of section 1291 fund with some modifications to reflect the enactment of the MTM rules under section 1296, which occurred after the 1992 proposed regulations were published. Under §1.1291-1T(b)(2)(v), a PFIC is a section 1291 fund with respect to a shareholder unless the PFIC is a pedigreed QEF with respect to the shareholder or a section 1296 election is in effect with respect to the shareholder. The definition of section 1291 fund in the 1992 proposed regulations is withdrawn in this issue of the **Federal Register**.

### 3. Definitions of shareholder and indirect shareholder

Prop. Treas. Reg. §1.1291-1(b)(7) and (b)(8) of the 1992 proposed regulations define the terms shareholder and indirect shareholder for purposes of section 1291. These definitions are cross-referenced in the definition of shareholder provided in §1.1291-9(j)(3). However, §1.1295-1(j) defines shareholder for QEF purposes, and section 1296(g) and §1.1296-1(e) provide a separate set of attribution rules for purposes of applying the MTM rules to United States persons that own an interest in a PFIC.

These temporary regulations generally adopt the definition of shareholder provided in the 1992 proposed regulations. Under §1.1291-1T(b)(7), the term shareholder means any United States person that owns stock of a PFIC directly or indirectly. For purposes of these regulations, a domestic partnership or an S corporation is treated as a shareholder of a PFIC only for purposes of the information reporting requirements of sections 1291 and 1298, including section 1298(f). In



addition, these regulations provide that a domestic grantor trust is treated as a shareholder of a PFIC only for purposes of the information reporting requirement set forth at §1.1298-1T(b)(3)(i), which applies to domestic liquidating trusts and fixed investment trusts.

These temporary regulations revise certain aspects of the definition of indirect shareholder in the 1992 proposed regulations and adopt other aspects of the definition without amendment. Section 1.1291-1T(b)(8) defines the term indirect shareholder as a United States person that indirectly owns stock in a PFIC and provides rules for attributing ownership of PFIC stock through corporations, partnerships, S corporations, estates, and trusts. The rule in the 1992 proposed regulations concerning ownership through a PFIC has been revised in §1.1291-1T(b)(8)(ii)(B) to incorporate a statutory change to section 1298(a)(2)(B) made in the Taxpayer Relief Act, which provides that section 1297(d) does not apply for purposes of determining whether a United States person owns a PFIC indirectly through a foreign corporation. Thus, in the case of a person that owns stock of a PFIC that is also a CFC, notwithstanding that under section 1297(d) such corporation may not be treated as a PFIC with respect to certain shareholders, the foreign corporation is treated as a PFIC with respect to the shareholder for purposes of determining whether the shareholder owns an interest in any stock of a PFIC held by the foreign corporation.

These temporary regulations make certain changes to the rules in the 1992 proposed regulations for attributing ownership of PFIC stock through partnerships, estates, and trusts. The 1992 proposed regulations generally provide that in the case of a partnership, S corporation, estate, or trust that directly or indirectly owns stock, the

partners, shareholders, or beneficiaries (as the case may be) are considered to own a proportionate amount of such stock. These temporary regulations clarify that the attribution rules apply to both domestic and foreign partnerships, estates, and trusts.

These temporary regulations also provide special rules for nongrantor trusts and grantor trusts. In particular, Treas. Reg. §1.1291-1T(b)(8)(iii)(D) provides that if a foreign or domestic grantor trust directly or indirectly owns PFIC stock, a person that is treated under sections 671 through 679 as the owner of any portion of the trust that holds an interest in the stock is considered to own an interest in the stock held by that portion of the trust. In addition, Treas. Reg. §1.1291-1T(b)(8)(iii)(C) provides that, in general, if a foreign or domestic estate or nongrantor trust directly or indirectly owns PFIC stock, each beneficiary of the estate or trust is considered to own a proportionate amount of such stock. The cross-referenced notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register** requests comments on the determination of proportionate ownership by a beneficiary of PFIC stock held by a domestic or foreign estate or nongrantor trust. Until further guidance is provided on estate and trust attribution rules, beneficiaries of estates and nongrantor trusts that hold PFIC stock subject to the section 1291 regime should use a reasonable method to determine their ownership interests in a PFIC held by the estate or nongrantor trust. Moreover, until further guidance is provided, beneficiaries of estates and nongrantor trusts that are subject to the section 1291 regime with respect to PFIC stock held by the estate or nongrantor trust are exempt from section 1298(f) filing requirements for taxable years in which the beneficiary is not treated as receiving an excess distribution (within the meaning of section 1291(b)) or as recognizing gain that is

treated as an excess distribution (under section 1291(a)(2)) with respect to the stock of the PFIC that the beneficiary is considered to own through the estate or trust. See, for example, §1.1298-1T(b)(3)(iii).

These temporary regulations do not provide guidance on the application of section 1291 when an estate or nongrantor trust, or beneficiary thereof, receives, or is treated as receiving, an excess distribution (including an amount of gain treated as an excess distribution). Section 1291 and the principles of subchapter J must, however, be applied in a reasonable manner with respect to estates and trusts, and beneficiaries thereof, to preserve or trigger the tax and interest charge rules under section 1291. Accordingly, until further guidance is issued, the estate or trust, or the beneficiary thereof, must take excess distributions into account under section 1291 in a reasonable manner, consistent with the general operating rules of subchapter J. It would be unreasonable for the shareholders of the section 1291 fund to take the position that neither the beneficiaries nor the estate or trust are subject to the tax and interest charge rules under section 1291. The definitions in the 1992 proposed regulations of shareholder and indirect shareholder are withdrawn in this issue of the **Federal Register**.

As stated earlier, the term shareholder is defined in §1.1291-9(j)(3) by cross-reference to the definitions of shareholder and indirect shareholder set forth in the 1992 proposed regulations. Certain other provisions, including §§1.1291-10(a), 1.1297-3(a), and 1.1298-3(a), cross-reference the definition of shareholder in §1.1291-9(j)(3). These temporary regulations include a definition of shareholder in §1.1291-9T(j)(3) that cross-references the definitions of shareholder and indirect shareholder in §1.1291-1T(b)(7)

and (b)(8). In addition, §1.1291-9(j)(3) is amended to cross-reference the definition of shareholder in §1.1291-9T(j)(3) rather than the definitions of shareholder and indirect shareholder in the 1992 proposed regulations. Accordingly, the §1.1291-1T(b) definition of shareholder applies for purposes of sections 1291 and 1298(f) as well as other provisions that cross-reference §1.1291-9(j)(3).

B. Section 1298(f)

1. General filing requirement under section 1298(f)

Except as otherwise provided by the Secretary, section 1298(f) requires a United States person that is a shareholder of a PFIC to file an annual report containing such information as the Secretary may require. These temporary regulations generally require a United States person that is a shareholder of a PFIC to complete and file Form 8621 (or successor form). The requirement to file Form 8621 under these temporary regulations applies to a shareholder that owns an interest in a PFIC at any time during the shareholder's taxable year, regardless of whether the PFIC has a taxable year ending within the shareholder's taxable year. These temporary regulations generally require the United States person that is at the lowest tier in a chain of ownership, and that is a shareholder (including an indirect shareholder) of a PFIC, to file an annual report on Form 8621. In addition, a United States person that owns PFIC stock through another United States person also is required to file an annual report in certain circumstances, including when that person is required to include an amount in income with respect to the PFIC or when that person is subject to tax under section 1291 as a result of being treated as receiving an excess distribution or as recognizing gain that is treated as an excess distribution with respect to the PFIC. For example, if a United

States citizen owns an interest in a domestic partnership, which, in turn, owns an interest in a PFIC, the domestic partnership is required to file an annual report because the domestic partnership is the United States person that is at the lowest tier in the chain of ownership. In addition, the United States citizen is required to file an annual report when such person is treated as receiving an excess distribution or as recognizing gain that is treated as an excess distribution with respect to the PFIC.

In order to eliminate certain duplicative reporting obligations, these regulations provide an exception to the rule that requires a United States person that owns an interest in a PFIC through another United States person to submit an annual report. In particular, under §1.1298-1T(b)(2)(ii), a United States person that is required to include an amount in income only under the QEF or MTM rules with respect to PFIC stock held through other United States persons generally is not required to file an annual report under section 1298(f) with respect to the PFIC if another shareholder through which the United States person holds the PFIC stock timely files an annual report under section 1298(f) with respect to the PFIC. This exception does not apply, however, if the United States person made a QEF election with respect to the PFIC and then transferred the shares of the PFIC to a domestic partnership or S corporation that did not itself make a QEF election with respect to the PFIC.

The section 1298(f) filing requirements set forth in these temporary regulations generally apply to domestic estates, domestic nongrantor trusts, and United States persons that are treated under sections 671 through 679 as owners of any portion of foreign and domestic grantor trusts. In general, domestic estates and nongrantor trusts are required to file an annual report (subject to the exceptions provided in these

regulations) under the rules generally applicable to United States persons, which are set forth in §1.1298-1T(b)(1) and (b)(2). United States persons that are treated as the owners of domestic and foreign grantor trusts that own PFIC stock generally are required to file an annual report under §1.1298-1T(b)(1) and (b)(2) (subject to the exceptions provided in these regulations).

However, a United States person that is treated as the owner of any portion of a domestic liquidating trust described in §301.7701-4(d) of this chapter and created pursuant to a court order issued in bankruptcy under Chapter 7 (11 U.S.C. 701 et seq.) of the Bankruptcy Code or pursuant to a confirmed plan under Chapter 11 (11 U.S.C. 1101 et seq.) of the Bankruptcy Code, or of any portion of a domestic widely held fixed investment trust under §1.671-5, is not required to file Form 8621 under section 1298(f) and these regulations with respect to any PFICs owned by such trust. In such a case, §1.1298-1T(b)(3)(i) provides that the trust itself must file Form 8621.

Further, §1.1298-1T(b)(3)(ii) provides that the filing requirement under section 1298(f) does not apply to a United States person that is treated as the owner of any portion of a foreign grantor trust that is a foreign pension fund operated principally to provide pension or retirement benefits, if, pursuant to an income tax convention to which the United States is a party, income earned by the pension fund is taxed as income of the United States person only when and to the extent it is paid to, or for the benefit of, the United States person.

United States persons that are beneficiaries of foreign estates and nongrantor trusts and that have made elections under section 1295 or 1296 with respect to PFIC stock held by the estate or trust are required to file an annual report under these

regulations (subject to the exceptions provided in these regulations) with respect to the PFIC. United States persons that are beneficiaries of domestic estates and nongrantor trusts that hold PFIC stock, which have made elections under section 1295 or 1296 with respect to the PFIC stock, generally are required to file an annual report under these regulations (subject to the exceptions provided in these regulations) with respect to the PFIC only if the estate or trust (and any other United States person in the chain of ownership) fails to file an annual report under these regulations. In addition, United States persons that are beneficiaries of domestic and foreign estates and nongrantor trusts are required to file an annual report under these regulations (subject to the exceptions provided in these regulations) for taxable years in which the beneficiary is treated as receiving an excess distribution (under section 1291(b)) or recognizing gain treated as an excess distribution (under section 1291(a)(2)) with respect to PFIC stock held by the estate or trust.

## 2. Exception for tax exempt organizations

A United States person that qualifies as a tax exempt organization under certain Code provisions may own an interest in a PFIC but may not be subject to tax under subchapter F of Subtitle A of the Code (addressing exempt organizations) with respect to the PFIC. In such a case, the United States person is not required to file an annual report under section 1298(f) and these regulations with respect to the PFIC.

Specifically, §1.1298-1T(c)(1) provides that a shareholder that is an organization exempt under section 501(a), a state college or university described in section 511(a)(2)(B), a plan described in section 403(b) or 457(b), an individual retirement plan or annuity as defined in section 7701(a)(37), or a qualified tuition program described in

section 529 or 530 is required to file an annual report under section 1298(f) with respect to a PFIC only if the income derived with respect to the PFIC would be taxable to the organization under subchapter F of Subtitle A of the Code.

3. \$25,000 and \$5,000 exceptions

A comment letter was received that requested the IRS and the Treasury Department to exercise the authority to promulgate exceptions to the filing requirements set forth under section 1298(f). These temporary regulations provide exceptions to the section 1298(f) filing requirements to address the concerns underlying the comment. Section 1.1298-1T(c)(2)(i) provides exceptions to the requirement to file an annual report under section 1298(f) and these regulations for certain shareholders with respect to an interest owned in a PFIC for which the shareholder is subject to tax only under section 1291 (that is, no QEF or MTM election is in effect with respect to the shareholder). Under §1.1298-1T(c)(2)(i), this exception applies with respect to a PFIC only if: (i) the shareholder is not subject to tax under section 1291 with respect to any excess distributions received from the PFIC, or gains derived with respect to the PFIC that are treated as excess distributions, during the taxable year of the shareholder (§1.1298-1T(c)(2)(i)(B)); and (ii) either (A) the aggregate value of all PFIC stock owned by the shareholder at the end of the taxable year of the shareholder does not exceed \$25,000, or (B) the PFIC stock is owned by the shareholder through another PFIC, and the value of the shareholder's proportionate share of the upper-tier PFIC's interest in the lower-tier PFIC does not exceed \$5,000. The \$25,000 threshold in §1.1298-1T(c)(2)(i)(A)(1) is increased to \$50,000 for shareholders who file a joint return.



These temporary regulations provide special rules for determining whether the \$25,000 threshold is met in the case of indirect ownership. Under §1.1298-1T(c)(2)(ii), shareholders must take into account all PFIC stock owned directly or indirectly except for PFIC stock owned through another United States person that itself is a shareholder of the PFIC. Moreover, for these purposes, shareholders would not take into account PFIC stock owned through another PFIC because the value of the stock of the lower tier PFIC is reflected in the value of the upper tier PFIC stock.

Shareholders are not required to obtain an appraisal in order to determine the value of PFIC stock. Section 1.1298-1T(c)(2)(iv) provides that shareholders may rely upon periodic account statements provided at least annually to determine the value of a PFIC unless the shareholder has reason to know that the statements do not reflect a reasonable estimate of the PFIC's value.

C. Time and Manner for Filing Form 8621

Section 1298(f) was effective on March 18, 2010. As stated earlier, Notice 2010-34 provided that PFIC shareholders that were not otherwise required to file Form 8621 prior to March 18, 2010, would not be required to file an annual report under section 1298(f) for taxable years beginning before March 18, 2010. Furthermore, Notice 2011-55 suspended the requirement to file an annual report under section 1298(f) for taxable years beginning on or after March 18, 2010, for PFIC shareholders that were not otherwise required to file Form 8621 under the then-current Instructions to Form 8621. Section 1.1298-1T(c)(3) provides that United States persons are not required under section 1298(f) and these regulations to file an annual report with respect to a PFIC for a taxable year of the United States person ending before **INSERT DATE OF**

**PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER**]. The rules described in Notice 2011-55 for suspended taxable years (as defined in Notice 2011-55) with respect to section 1298(f) and Form 8621 are no longer applicable. For taxable years ending on or after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**, a shareholder that is required to file Form 8621 under these regulations with respect to a PFIC that it owns during a taxable year must attach Form 8621 to its Federal income tax return (or, if applicable, partnership or exempt organization return) for such taxable year. See §1.1298-1T(d). Although Notice 2011-55 is no longer applicable with respect to section 1298(f) and Form 8621, these regulations do not affect Notice 2011-55 with respect to filing requirements under section 6038D (relating to Form 8938).

These temporary regulations provide that if a United States person is required to file Form 8621 with respect to more than one PFIC, the United States person must file a separate Form 8621 for each PFIC. However, United States persons that file a joint return may file a single Form 8621 with respect to a PFIC in which they jointly or individually own an interest. See §1.1298-1T(e).

A revised Form 8621 has been released and the Instructions to the form will be modified to reflect the filing requirements under section 1298(f) and these regulations.

#### D. Coordination With Other Filing Requirements

##### 1. Coordination with other PFIC filing requirements

A shareholder may be required to file Form 8621 pursuant to provisions other than those under section 1298(f) and these temporary regulations. For example, §1.1295-1(f)(2)(i) requires a shareholder to file Form 8621 annually in connection with

the shareholder's QEF election. Moreover, a shareholder must file Form 8621 in order to make certain elections (such as a deemed sale election pursuant to §1.1297-3(b)(4)). Nothing in section 1298(f) or these regulations relieves a person from the obligation to file Form 8621 under any other provision. If a shareholder is required to file Form 8621 (or successor form) with respect to a PFIC pursuant to section 1298(f) and these regulations, as well as another information reporting obligation, the shareholder may file a single Form 8621 that contains all of the required information.

## 2. Coordination with section 6038D

Section 6038D requires an individual who holds any interest in a specified foreign financial asset (as defined in section 6038D(b)) during any taxable year to provide information with respect to such asset. Certain United States persons that own an interest in a PFIC may be subject to the information reporting requirements of both sections 1298(f) and 6038D with respect to the PFIC interest. The regulations under section 6038D provide guidance coordinating the two reporting requirements to eliminate duplicative reporting. See §§1.6038D-1T through 1.6038D-8T for rules relating to section 6038D reporting. Pursuant to those regulations, in order to avoid duplicative reporting of assets, a United States person is not required to report a PFIC under section 6038D if the person reports the PFIC on a timely filed Form 8621 and the person's report under section 6038D (on Form 8938) indicates, as provided on the form, that the person complied with its Form 8621 filing requirement with respect to the PFIC.

## E. Form 5471 Filing Obligations

Pursuant to sections 6038 and 6046, certain United States persons are required to file an information return on Form 5471, "Information Return of U.S. Persons with

Respect to Certain Foreign Corporations,” with respect to their ownership in certain foreign corporations or because they are an officer or director of certain foreign corporations.

1. Constructive ownership exception

Certain United States persons otherwise required to file Form 5471 do not have to file if: (i) the United States person does not directly own an interest in the foreign corporation, (ii) the United States person would otherwise be required to furnish the information solely by reason of attribution of stock ownership from a United States person, and (iii) the person from whom the stock ownership is attributed furnishes all of the information required to be reported by the person to whom the stock ownership is attributed (“constructive ownership exception”). See §§1.6038-2(j)(2) and 1.6046-1(e)(4)(iii). In addition, pursuant to §§1.6038-2(j)(3) and 1.6046-1(e)(5), shareholders that are excepted from filing Form 5471 under the constructive ownership exception have been required to file a statement with their returns indicating that the requirement to provide information has been satisfied and identifying the return with which the information was or will be filed and the place of filing. The IRS believes that this statement is not necessary. Accordingly, these temporary regulations remove the requirement to file a statement in circumstances where a United States person qualifies for the constructive ownership exception. See §§1.6038-2T(j)(3) and 1.6046-1T(e)(5).

2. Section 953(c) shareholders

As discussed earlier, the requirement to file an information return for persons treated as United States shareholders under section 953(c), as well as certain United

States persons that are officers and directors of the CFC, was added to the Code in 1988. The 1991 proposed regulations addressed these new filing requirements.

These regulations finalize §1.6046-1(a)(2) and (c) to reflect the additional filing requirement imposed on United States persons treated as section 953(c) shareholders, and officers and directors of CFCs that have United States persons treated as section 953(c) shareholders, without any substantive changes from the 1991 proposed regulations.

3. Changes to conform the Section 6046 regulations to the Code and current information return form

Section 6046(a)(1)(B) through (D) mandates the filing of an information return by United States persons that: (i) acquire 10 percent or more of the stock of a foreign corporation; (ii) acquire stock, which, when added to any stock owned on the date of acquisition, equals 10 percent or more of the stock of the foreign corporation; (iii) are treated as a United States shareholder under section 953(c) with respect to a foreign corporation; or (iv) become a United States person while owning 10 percent or more of the stock of a foreign corporation. As discussed earlier, prior to the modifications made by the Taxpayer Relief Act, the stock ownership threshold at which reporting was required was 5 percent. Section 1.6046-1 was published in 1962, when the stock ownership threshold was 5 percent. These regulations revise §1.6046-1 to reflect the 10 percent ownership threshold change that was made in the Taxpayer Relief Act. These regulations also revise the examples to reflect the 10 percent ownership threshold.

In addition, several paragraphs of §1.6046-1 reference “Form 959”, Return by an Officer, Director, or Shareholder with Respect to the Organization or Reorganization of a Foreign Corporation and Acquisition of Stock. Form 959 was replaced in 1983 by Form 5471. These regulations modify §1.6046-1 to reference Form 5471 (or subsequent form), rather than Form 959, and remove §1.6046-1(f)(4), which described Form 959.

### **Effect on Other Documents**

Notice 2010-34 (2010-1 CB 612) is obsolete as of **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. Notice 2011-55 (2011-29 CB 663) is partially obsolete as of **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. Notice 2011-55 is only obsolete with respect to section 1298(f) and Form 8621. Notice 2011-55 continues to be in effect with respect to section 6038D and Form 8938.

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f), these regulations have been submitted to the Chief

Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### **Drafting Information**

The principal authors of these regulations are Barbara E. Rasch and Susan E. Massey of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

#### **PART 1--INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Sections 1.1291-1T, 1.1291-9, 1.1291-9T, and 1.1298-1T also issued under 26 U.S.C. 1298(a) and (g) \* \* \*

Section 1.1298-1T also issued under 26 U.S.C. 1298(f) and (g) \* \* \*

Section 1.6038-2T also issued under 26 U.S.C. 6038(d) \* \* \*

Section 1.6046-1T also issued 26 U.S.C. 6046(b) \* \* \*

Par. 2. Section 1.1291-0T is added to read as follows:

§1.1291-0T Passive foreign investment company – table of contents (temporary).

This section lists the table of contents for §§1.1291-1T and 1.1291-9T.

§1.1291-1T Taxation of United States persons that are shareholders of section 1291 funds (temporary).

(a) through (b)(2)(i) [Reserved].

(ii) Pedigreed QEF.

(b)(2)(iii) and (iv) [Reserved].

- (v) Section 1291 fund.
- (3) through (6) [Reserved].
- (7) Shareholder.
- (8) Indirect shareholder.
- (i) In general.
- (ii) Ownership through a corporation.
  - (A) Ownership through a non-PFIC foreign corporation.
  - (B) Ownership through a PFIC.
  - (C) Ownership through a domestic corporation.
- (iii) Ownership through pass-through entities.
  - (A) Partnerships.
  - (B) S Corporations.
  - (C) Estates and nongrantor trusts.
  - (D) Grantor trusts.
- (c) through (j) [Reserved].
- (k) Effective/applicability dates.

§1.1291-9T Deemed dividend election (temporary).

- (a) through (j)(2) [Reserved].
- (3) Shareholder.
- (k) Effective/applicability date.

Par. 3 Section 1.1291-1T is added to read as follows:

§1.1291-1T Taxation of United States persons that are shareholders of section 1291 funds (temporary).

- (a) through (b)(2)(i) [Reserved].

(ii) Pedigreed QEF. A PFIC is a pedigreed QEF with respect to a shareholder if the PFIC has been a QEF with respect to the shareholder for all taxable years during which the corporation was a PFIC that are included wholly or partly in the shareholder's holding period of the PFIC stock.

- (b)(2)(iii) and (iv) [Reserved].

(v) Section 1291 fund. A PFIC is a section 1291 fund with respect to a shareholder unless the PFIC is a pedigreed QEF with respect to the shareholder or a section 1296 election is in effect with respect to the shareholder.



(3) through (6) [Reserved].

(7) Shareholder. A shareholder is a United States person that directly owns stock of a PFIC (a direct shareholder), or that is an indirect shareholder (as defined in section 1298(a) and paragraph (b)(8) of this section). For purposes of sections 1291 and 1298, a domestic partnership or S corporation (as defined in section 1361) is not treated as a shareholder of a PFIC except for purposes of any information reporting requirements, including the requirement to file an annual report under section 1298(f). In addition, to the extent that a person is treated under sections 671 through 678 as the owner of a portion of a domestic trust, the trust is not treated as a shareholder of a PFIC with respect to PFIC stock held by that portion of the trust, except for purposes of the information reporting requirements of §1.1298-1T(b)(3)(i) (imposing an information reporting requirement on domestic liquidating trusts and fixed investment trusts).

(8) Indirect shareholder--(i) In general. An indirect shareholder of a PFIC is a United States person that indirectly owns stock of a PFIC. A person indirectly owns stock when it is treated as owning stock of a corporation owned by another person, including another United States person, under this paragraph (b)(8). In applying this paragraph (b)(8), the determination of a person's indirect ownership is made on the basis of all the facts and circumstances in each case; the substance rather than the form of ownership is controlling, taking into account the purpose of sections 1291 through 1298.

(ii) Ownership through a corporation--(A) Ownership through a non-PFIC foreign corporation. A person that directly or indirectly owns 50 percent or more in value of the

stock of a foreign corporation that is not a PFIC is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the foreign corporation.

(B) Ownership through a PFIC. A person that directly or indirectly owns stock of a PFIC is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the PFIC. Section 1297(d) shall not apply in determining whether a corporation is a PFIC for purposes of this paragraph (b)(8)(ii)(B).

(C) Ownership through a domestic corporation. Except as provided in paragraph (b)(8)(iii)(B) of this section, if stock of a section 1291 fund is not treated as owned indirectly by a United States person under this paragraph (b)(8) (determined without regard to this paragraph (b)(8)(ii)(C)), but would be treated as owned by a United States person if paragraph (b)(8)(ii)(A) of this section applied to domestic corporations as well as foreign corporations, then the stock is considered owned by the United States person.

(iii) Ownership through pass-through entities--(A) Partnerships. If a foreign or domestic partnership directly or indirectly owns stock, the partners of the partnership are considered to own such stock proportionately in accordance with their ownership interests in the partnership.

(B) S Corporations. If an S corporation directly or indirectly owns stock, each S corporation shareholder is considered to own such stock proportionately in accordance with the shareholder's ownership interest in the S corporation.

(C) Estates and nongrantor trusts. If a foreign or domestic estate or nongrantor trust (other than an employees' trust described in section 401(a) that is exempt from tax under section 501(a)) directly or indirectly owns stock, each beneficiary of the estate or

trust is considered to own a proportionate amount of such stock. For purposes of this paragraph (b)(8)(iii)(C), a nongrantor trust is any trust or portion of a trust that is not treated as owned by one or more persons under sections 671 through 679.

(D) Grantor trusts. If a foreign or domestic trust directly or indirectly owns stock, a person that is treated under sections 671 through 679 as the owner of any portion of the trust that holds an interest in the stock is considered to own the interest in the stock held by that portion of the trust.

(c) (1) and (2) [Reserved].

(3) [Reserved]. For further guidance, see §1.1291-1(c)(3).

(d) [Reserved].

(e) [Reserved]. For further guidance, see §1.1291-1(e).

(f) through (i) [Reserved].

(j) [Reserved]. For further guidance, see §1.1291-1(j).

(k) Effective/applicability dates. Paragraphs (b)(2)(ii), (b)(2)(v), (b)(7), and (b)(8) of this section apply to taxable years of shareholders ending on or after **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER]**.

(l) Expiration date. The applicability of paragraphs (b)(2)(ii), (b)(2)(v), (b)(7), and (b)(8) of this section expires on **[INSERT DATE THREE YEARS AFTER DATE THIS DOCUMENT IS FILED WITH THE OFFICE OF THE FEDERAL REGISTER]**.

Par. 4. Section 1.1291-9 is amended by revising paragraph (j)(3) and adding paragraph (k)(3) to read as follows:

§1.1291-9 Deemed dividend election.

\* \* \* \* \*

(j) \* \* \*

(3) [Reserved]. For further guidance see §1.1291-9T(j)(3).

(k) \* \* \*

(3) [Reserved]. For further guidance see §1.1291-9T(k)(3).

Par. 5. Section 1.1291-9T is added to read as follows:

§1.1291-9T Deemed dividend election (temporary).

(a) through (j)(2) [Reserved]. For further guidance see §1.1291-9(a) through (j)(2).

(3) Shareholder. A shareholder is a United States person that is a shareholder as defined in §1.1291-1T(b)(7) or an indirect shareholder as defined in §1.1291-1T(b)(8).

(k) Effective/applicability date--(1) [Reserved]. For further guidance see §1.1291-9(k)(1).

(2) [Reserved]. For further guidance see §1.1291-9(k)(2).

(3) Paragraph (j)(3) of this section applies to taxable years of shareholders ending on or after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

(l) Expiration date. The applicability of paragraph (j)(3) of this section expires on **[INSERT DATE THREE YEARS AFTER DATE THIS DOCUMENT IS FILED WITH THE OFFICE OF THE FEDERAL REGISTER]**.

Par. 6. Section 1.1298-0T is added to read as follows:

§1.1298-0T Passive foreign investment company – table of contents (temporary).

This section lists the table of contents for §1.1298-1T.

§1.1298-1T Section 1298(f) annual reporting requirements for United States persons that are shareholders of a passive foreign investment company (temporary).

- (a) Overview.
- (b) Requirement to file.
  - (1) General rule.
  - (2) Additional requirement to file for certain indirect shareholders.
    - (i) General rule.
    - (ii) Exception to indirect shareholder reporting for certain QEF inclusions and MTM inclusions.
  - (3) Special rules for estates and trusts.
    - (i) Domestic liquidating trusts and fixed investment trusts.
    - (ii) Foreign pension funds.
    - (iii) Beneficiaries of foreign estates and trusts.
- (c) Exceptions.
  - (1) Exception if shareholder is a tax exempt entity.
  - (2) Exception if aggregate value of shareholder's PFIC stock is \$25,000 or less, or value of shareholder's indirect PFIC stock is \$5,000 or less.
    - (i) General rule.
    - (ii) Determination of the \$25,000 threshold in the case of indirect ownership.
    - (iii) Application of the \$25,000 exception to shareholders who file a joint return.
    - (iv) Reliance on periodic account statements.
  - (3) Exception for taxable years ending before **INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER**.
- (d) Time and manner for filing.
- (e) Separate annual report for each PFIC.
  - (1) General rule.
  - (2) Special rule for shareholders who file a joint return.
- (f) Coordination rule.
- (g) Examples.
- (h) Effective/applicability date.

Par. 7. Section 1.1298-1T is added to read as follows:

§1.1298-1T Section 1298(f) annual reporting requirements for United States persons that are shareholders of a passive foreign investment company (temporary).

(a) Overview. This section provides rules regarding the reporting requirements under section 1298(f) applicable to a United States person that is a shareholder (as defined in §1.1291-1T(b)(7)) of a passive foreign investment company (PFIC).

Paragraph (b) of this section provides the section 1298(f) annual reporting requirements generally applicable to United States persons. Paragraph (c) of this section sets forth

exceptions to reporting for certain shareholders that are tax exempt entities, that own PFIC stock with an aggregate value of \$25,000 or less, or that own certain PFIC stock with a value of \$5,000 or less, and provides an exception to reporting for all shareholders for taxable years ending before **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. Paragraph (d) of this section provides rules regarding the time and manner of filing the annual report. Paragraph (e) of this section sets forth the requirement to file a separate annual report with respect to each PFIC. Paragraph (f) of this section coordinates the requirement to file an annual report under section 1298(f) with the requirement to file an annual report under other provisions of the Internal Revenue Code (Code). Paragraph (g) of this section sets forth examples illustrating the application of this section.

(b) Requirement to file--(1) General rule. Except as otherwise provided in this section, a United States person that is a shareholder of a PFIC must complete and file Form 8621, "Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund" (or successor form), under section 1298(f) and these regulations for the PFIC if, during the shareholder's taxable year, the shareholder--

- (i) Directly owns stock of the PFIC;
- (ii) Is an indirect shareholder under §1.1291-1T(b)(8) that holds any interest in the PFIC through one or more entities, each of which is foreign; or
- (iii) Is an indirect shareholder under §1.1291-1T(b)(8)(iii)(D) that is treated under sections 671 through 678 as the owner of any portion of a trust described in section

7701(a)(30)(E) that owns, directly or indirectly through one or more entities, each of which is foreign, any interest in the PFIC.

(2) Additional requirement to file for certain indirect shareholders--(i) General rule. Except as otherwise provided in this section, an indirect shareholder that owns an interest in a PFIC through one or more United States persons also must file Form 8621 (or successor form) with respect to the PFIC under section 1298(f) and these regulations if, during the indirect shareholder's taxable year, the indirect shareholder is--

(A) Treated as receiving an excess distribution (within the meaning of section 1291(b)) with respect to the PFIC;

(B) Treated as recognizing gain that is treated as an excess distribution (under section 1291(a)(2)) as a result of a disposition of the PFIC;

(C) Required to include an amount in income under section 1293(a) with respect to the PFIC (QEF inclusion);

(D) Required to include an amount in income under section 1296(a) with respect to the PFIC (MTM inclusion); or

(E) Required to report the status of a section 1294 election with respect to the PFIC (see §1.1294-1T(h)).

(ii) Exception to indirect shareholder reporting for certain QEF inclusions and MTM inclusions. Except as otherwise provided in this paragraph (b)(2)(ii), the filing requirements under paragraph (b)(2)(i)(C) and (D) of this section do not apply with respect to a PFIC owned by an indirect shareholder described in paragraph (b)(2)(i)(C) or (b)(2)(i)(D) of this section if another shareholder through which the indirect shareholder owns an interest in the PFIC timely files Form 8621 (or successor form)

with respect to the PFIC under paragraph (b)(1) or (b)(2) of this section. However, the exception in this paragraph (b)(2)(ii) does not apply with respect to a PFIC owned by an indirect shareholder described in paragraph (b)(2)(i)(C) of this section that owns the PFIC through a domestic partnership or S corporation if the domestic partnership or S corporation does not make a qualified electing fund election with respect to the PFIC (see §1.1293-1(c)(2)(ii), addressing QEF stock transferred to a pass through entity that does not make a section 1295 election).

(3) Special rules for estates and trusts--(i) Domestic liquidating trusts and fixed investment trusts. A United States person that is treated under sections 671 through 678 as the owner of any portion of a trust described in section 7701(a)(30)(E) that owns, directly or indirectly, any interest in a PFIC is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the PFIC if the trust is either a domestic liquidating trust under §301.7701-4(d) of this chapter created pursuant to a court order issued in a bankruptcy under Chapter 7 (11 U.S.C. 701 et seq.) of the Bankruptcy Code or a confirmed plan under Chapter 11 (11 U.S.C. 1101 et seq.) of the Bankruptcy Code, or a widely held fixed investment trust under §1.671-5. Such a trust is treated as a shareholder for purposes of section 1298(f) and these regulations, and thus, except as otherwise provided in this section, the trust is required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the PFIC as provided in paragraphs (b)(1) and (b)(2) of this section.

(ii) Foreign pension funds. A United States person that is treated as the owner of any portion of a trust described in section 7701(a)(31)(B) that owns, directly or indirectly, any interest in a PFIC is not required under section 1298(f) and these



regulations to file Form 8621 (or successor form) with respect to the PFIC if the foreign trust is a foreign pension fund (including a foreign pension fund that is an individual retirement plan) operated principally to provide pension or retirement benefits, and, pursuant to an income tax convention to which the United States is a party, income earned by the pension fund may be taxed as the income of the owner of the trust only when and to the extent the income is paid to, or for the benefit of, the owner.

(iii) Beneficiaries of foreign estates and trusts. A United States person that is considered to own an interest in a PFIC because it is a beneficiary of an estate described in section 7701(a)(31)(A) or a trust described in section 7701(a)(31)(B) that owns, directly or indirectly, stock of a PFIC, and that has not made an election under section 1295 or 1296 with respect to the PFIC, is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the stock of the PFIC that it is considered to own through the estate or trust if, during the beneficiary's taxable year, the beneficiary is not treated as receiving an excess distribution (within the meaning of section 1291(b)) or as recognizing gain that is treated as an excess distribution (under section 1291(a)(2)) with respect to the stock.

(c) Exceptions--(1) Exception if shareholder is a tax exempt entity. A shareholder that is an organization exempt under section 501(a) because it is described in section 501(c), 501(d), or 401(a), a state college or university described in section 511(a)(2)(B), a plan described in section 403(b) or 457(b), an individual retirement plan or annuity as defined in section 7701(a)(37), or a qualified tuition program described in section 529 or 530 is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC unless the income derived with respect to the

PFIC stock would be taxable to the organization under subchapter F of Subtitle A of the Code.

(2) Exception if aggregate value of shareholder's PFIC stock is \$25,000 or less, or value of shareholder's indirect PFIC stock is \$5,000 or less--(i) General rule. A shareholder is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a section 1291 fund (as defined in §1.1291-1T(b)(2)(v)) for a shareholder's taxable year if--

(A) On the last day of the shareholder's taxable year,

(1) The value of all PFIC stock owned directly or indirectly under section 1298(a) and §1.1291-1T(b)(8) by the shareholder is \$25,000 or less; or

(2) The section 1291 fund stock is indirectly owned by the shareholder under section 1298(a)(2)(B) and §1.1291-1T(b)(8)(ii)(B), and the value of the section 1291 fund stock indirectly owned by the shareholder is \$5,000 or less;

(B) The shareholder is not treated as receiving an excess distribution (within the meaning of section 1291(b)) with respect to the section 1291 fund during the taxable year or as recognizing gain treated as an excess distribution under section 1291(a)(2) as the result of a disposition of the section 1291 fund during the taxable year; and

(C) An election under section 1295 has not been made to treat the section 1291 fund as a qualified electing fund with respect to the shareholder.

(ii) Determination of the \$25,000 threshold in the case of indirect ownership. For purposes of determining the value of stock held by a shareholder for purposes of paragraph (c)(2)(i)(A)(1) of this section, the shareholder must take into account the

value of all PFIC stock owned directly or indirectly under section 1298(a) and §1.1291-1T(b)(8), except for PFIC stock that is--

(A) Owned through another United States person that itself is a shareholder of the PFIC (including a domestic partnership or S corporation treated as a shareholder of a PFIC for purposes of information reporting requirements applicable to a shareholder); or

(B) Owned through a PFIC under section 1298(a)(2)(B) and §1.1291-1T(b)(8)(ii)(B).

(iii) Application of the \$25,000 exception to shareholders who file a joint return.

In the case of a joint return, the exception described in paragraph (c)(2)(i)(A)(1) of this section shall apply if the value of all PFIC stock owned directly or indirectly (as determined under section 1298(a), §1.1291-1T(b)(8), and paragraph (c)(2)(ii) of this section) by both spouses is \$50,000 or less, and all of the other applicable requirements of paragraph (c)(2) are met.

(iv) Reliance on periodic account statements. A shareholder may rely upon periodic account statements provided at least annually to determine the value of a PFIC unless the shareholder has actual knowledge or reason to know based on readily accessible information that the statements do not reflect a reasonable estimate of the PFIC's value.

(3) Exception for taxable years ending before [INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. A United States person is not required under section 1298(f) and these regulations to file an annual report with

respect to a PFIC for a taxable year of the United States person ending before **INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER**.

(d) Time and manner for filing. A United States person required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC must attach the form to its Federal income tax return (or, if applicable, partnership or exempt organization return) for the taxable year to which the filing obligation relates on or before the due date (including extensions) for the filing of the return. In the case of any failure to report information that is required to be reported pursuant to section 1298(f) and these regulations, the time for assessment of tax will be extended pursuant to section 6501(c)(8).

(e) Separate annual report for each PFIC--(1) General rule. If a United States person is required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to more than one PFIC, the United States person must file a separate Form 8621 (or successor form) for each PFIC.

(2) Special rule for shareholders who file a joint return. United States persons that file a joint return may file a single Form 8621 (or successor form) with respect to a PFIC in which they jointly or individually own an interest.

(f) Coordination rule. A United States person that is a shareholder of a PFIC may file a single Form 8621 (or successor form) with respect to the PFIC that contains all of the information required to be reported pursuant to section 1298(f) and these regulations and any other information reporting requirements or election rules.

(g) Examples. The following examples illustrate the rules of this section:

Example 1. General requirement to file. (i) Facts. In 2013, J, a United States citizen, directly owns an interest in Partnership X, a domestic partnership, which, in turn,

owns an interest in A Corp, which is a PFIC. In addition, J directly owns an interest in Partnership Y, a foreign partnership, which, in turn, owns an interest in A Corp. Neither J nor Partnership X has made a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to A Corp. As of the last day of 2013, the value of Partnership X's interest in A Corp is \$200,000, and the value of J's proportionate share of Partnership Y's interest in A Corp is \$100,000. During 2013, J is not treated as receiving an excess distribution or recognizing gain treated as an excess distribution with respect to A Corp. Partnership X timely files a Form 8621 under section 1298(f) and paragraph (b)(1) of this section with respect to A Corp for 2013.

(ii) Results. J is the first United States person in the chain of ownership with respect to J's interest in A Corp held through Partnership Y. Under paragraph (b)(1) of this section, J must file a Form 8621 under section 1298(f) with respect to J's interest in A Corp held through Partnership Y because J is an indirect shareholder of A Corp under §1.1291-1T(b)(8) that holds PFIC stock through a foreign entity (Partnership Y), and there are no other United States persons in the chain of ownership. The fact that Partnership X filed a Form 8621 with respect to A Corp does not relieve J of the obligation under paragraph (b)(1) of this section to file a Form 8621 with respect to J's interest in A Corp held through Partnership Y.

Example 2. Application of the \$25,000 exception. (i) Facts. In 2013, J, a United States citizen, directly owns stock of A Corp, B Corp, and C Corp, all of which were PFICs during 2013. As of the last day of 2013, the value of J's interests was \$5,000 in A Corp, \$10,000 in B Corp, and \$4,000 in C Corp. J timely filed an election under section 1295 to treat A Corp as a qualified electing fund for the first year in which A Corp qualified as a PFIC, and a mark-to-market election under section 1296 with respect to the stock of B Corp. J did not make a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to C Corp. J did not receive an excess distribution or recognize gain treated as an excess distribution in respect of C Corp during 2013.

(ii) Results. Under paragraph (b)(1) of this section, J must file separate Forms 8621 with respect to A Corp and B Corp for 2013. However, J is not required to file a Form 8621 with respect to C Corp because J owns, in the aggregate, PFIC stock with a value of less than \$25,000 on the last day of J's taxable year, C Corp is not subject to a qualified electing fund election or mark to market election with respect to J, and J did not receive an excess distribution in respect of C Corp or recognize gain treated as an excess distribution in respect of C Corp during 2013. Therefore, J qualifies for the \$25,000 exception in paragraph (c)(2) of this section with respect to C Corp.

Example 3. Application of the \$25,000 exception to indirect shareholder. (i) Facts. E, a United States citizen, directly owns an interest in Partnership X, a domestic partnership. Partnership X, in turn, directly owns an interest in A Corp and B Corp, both of which are PFICs. Partnership X timely filed an election under section 1295 to treat B Corp as a qualified electing fund for the first year in which B Corp qualified as a PFIC. In addition, E directly owns an interest in C Corp, which is a PFIC. C Corp, in turn,

owns an interest in D Corp, which is a PFIC. E has not made a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to A Corp, C Corp, or D Corp. As of the last day of 2013, the value of Partnership X's interest in A Corp is \$30,000, the value of Partnership X's interest in B Corp is \$30,000, the value of E's indirect interest in A Corp is \$10,000, the value of E's indirect interest in B Corp is \$10,000, the value of E's interest in C Corp is \$20,000, and the value of C Corp's interest in D Corp is \$10,000. During 2013, E did not receive an excess distribution, or recognize gain treated as an excess distribution, with respect to A Corp, C Corp, or D Corp. Partnership X timely files Forms 8621 under section 1298(f) and paragraph (b)(1) of this section with respect to A Corp and B Corp for 2013.

(ii) Results. Under paragraph (b) of this section, E does not have to file a Form 8621 under section 1298(f) and these regulations with respect to A Corp because E is not the United States person that is at the lowest tier in the chain of ownership with respect to A Corp and E did not receive an excess distribution or recognize gain treated as an excess distribution with respect to A Corp. Furthermore, under paragraph (b)(2)(ii) of this section, E does not have to file a Form 8621 under section 1298(f) and these regulations with respect to B Corp because Partnership X timely filed a Form 8621 with respect to B Corp. In addition, under paragraph (c)(2)(ii)(A) of this section, E does not take into account the value of A Corp and B Corp, which E owns through Partnership X, in determining whether E qualifies for the \$25,000 exception. Further, under paragraph (c)(2)(ii)(B) of this section, E does not take into account the value of D Corp in determining whether E qualifies for the \$25,000 exception. Therefore, even though E is the United States person that is at the lowest tier in the chain of ownership with respect to C Corp and D Corp, E does not have to file a Form 8621 with respect to C Corp or D Corp because E qualifies for the \$25,000 exception set forth in paragraph (c)(2)(i)(A)(1) of this section.

Example 4. Indirect shareholder's requirement to file. (i) Facts. The facts are the same as in Example 3, except that the value of E's interest in C Corp is \$30,000 and the value of E's proportionate share of C Corp's interest in D Corp is \$3,000.

(ii) Results. The results are the same as in Example 3 with respect to the requirement to file a Form 8621 under section 1298(f) and these regulations with respect to A Corp and B Corp. However, under the facts in this Example 4, E does not qualify for the \$25,000 exception under paragraph (c)(2)(i)(A)(1) of this section because the value of E's interest in C Corp is \$30,000. Accordingly, E must file a Form 8621 under section 1298(f) and these regulations with respect to C Corp. However, E does qualify for the \$5,000 exception under paragraph (c)(2)(i)(A)(2) of this section with respect to D Corp, and thus does not have to file a Form 8621 with respect to D Corp.

(h) Effective/applicability date. Except as provided in paragraph (c)(3) of this section, this section applies to taxable years of shareholders ending on or after

**[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL**

**REGISTER**]. Paragraph (c)(3) of this section applies to taxable years of shareholders ending before **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

(i) Expiration date. This section expires on **[INSERT DATE THREE YEARS AFTER DATE THIS DOCUMENT IS FILED WITH THE OFFICE OF THE FEDERAL REGISTER]**.

Par. 8. Section 1.6038-2 is amended by revising paragraph (j)(3) to read as follows:

**§1.6038-2** Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

\* \* \* \* \*

(j) \* \* \*

(3) [Reserved]. For further guidance, see §1.6038-2T(j)(3).

\* \* \* \* \*

Par. 9. Section 1.6038-2T is added to read as follows:

**§1.6038-2T** Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations (temporary).

(a) though (j)(2). [Reserved]. For further guidance, see §1.6038(a) through (j)(2).

(3) Statement required. Any United States person required to furnish information under this section with his return who does not do so by reason of the provisions of paragraph (j)(1) of this section shall file a statement with his income tax return indicating that such liability has been (or will be) satisfied and identifying the return with which the information was or will be filed and the place of filing.

(k) through (l) [Reserved]. For further guidance, see §1.6038(k) through (l).

(m) Effective/applicability date. Except as otherwise provided, this section applies with respect to information for annual accounting periods beginning on or after June 21, 2006. Paragraphs (k)(1) and (k)(5) Examples 3 and 4 of this section apply June 21, 2006. Paragraph (d) of this section applies to taxable years ending after April 9, 2008. Paragraph (j)(3) of this section applies to returns filed on or after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

(n) Expiration date. Paragraph (j)(3) of this section expires on or before **[INSERT DATE THREE YEARS AFTER DATE THIS DOCUMENT IS FILED WITH THE OFFICE OF THE FEDERAL REGISTER]**.

Par. 10. Section 1.6046-1 is amended by:

1. Paragraphs (a)(1) is amended by removing the language “Form 959” and adding “Form 5471 (or subsequent form)” in its place.
2. Paragraph (f)(1) is amended by removing the language “5” and adding “10” in its place.
3. Revising paragraph (a)(2)(i).
4. Revising Examples 2 through 4 of paragraph (a)(3).
5. Revising paragraph (c).
6. Revising paragraph (e)(5).
7. Revising paragraph (f)(4).
8. Redesignating paragraph (l) as paragraph (l)(1).
9. Adding paragraph (l)(2).

The additions and revisions read as follows:



§1.6046-1 Returns as to organizations or reorganizations of foreign corporations and as to acquisitions of their stock.

(a) \* \* \*

(2) \* \* \* (i) Requirement of return. Each United States citizen or resident who is at any time after January 1, 1963, an officer or director of a foreign corporation shall make a return on Form 5471 setting forth the information described in paragraph (a)(2)(ii) of this section with respect to each United States person who, during the time such citizen or resident is such an officer or director --

(a) Acquires (whether in one or more transactions) outstanding stock of such corporation which has, or which when added to any such stock then owned by him (excluding any stock owned by him on January 1, 1963, if on that date he owned 10 percent or more in value of such stock) has, a value equal to 10 percent or more in value of the outstanding stock of such foreign corporation;

(b) Acquires (whether in one or more transactions) an additional 10 percent or more in value of the outstanding stock of such foreign corporation; or

(c) Is not described in paragraph (a)(2)(i)(a) or (b) of this section, and who, at any time after January 1, 1987, is treated as a United States shareholder under section 953(c) with respect to such foreign corporation.

\* \* \* \* \*

(3) \* \* \*

Example 2. (i) Facts. A, a United States citizen, is, on January 1, 2014, a director of M, a foreign corporation. X, on January 1, 2014, is a United States person owning 4% in value of the outstanding stock of M Corporation. On July 1, 2014, X acquires 4% in value of the outstanding stock of M Corporation and on September 1, 2014, he acquires an additional 4% in value of such stock.

(ii) Results. The July 1, 2014, transaction does not give rise to liability to file a return; however, A must file a return as a result of the September 1, 2014, transaction because X's holdings now exceed 10%.

Example 3. (i) Facts. The facts are the same as in Example 2 and, on September 15, 2014, X acquires an additional 8% in value of the outstanding stock of M Corporation. (X's total holdings are now 20%.) On November 1, 2014, X acquires an additional 4% in value of the outstanding stock of M Corporation.

(ii) Results. The September 15, 2014, transaction does not give rise to liability to file a return since X has not acquired 10% in value of the outstanding stock of M Corporation since A last became liable to file a return. However, A must file a return as a result of the November 1, 2014, transaction because X has now acquired an additional 10% in value of the outstanding stock of M Corporation.

Example 4. (i) Facts. The facts are the same as in Examples 2 and 3 and, in addition, B, a United States citizen, becomes an officer of M Corporation on September 10, 2014.

(ii) Results. B is not required to file a return either as a result of the facts set forth in Example 2 or as a result of the September 15, 2014, transaction described in Example 3. However, B is required to file a return as a result of the November 1, 2014, transaction described in Example 3 because X has acquired an additional 10% in value of the outstanding stock of M Corporation while B is an officer or director.

\* \* \* \* \*

(c) *Returns required of U.S. persons when liability to file arises after January 1, 1963—*(1) *U.S. persons required to file.* A return on Form 5471, containing the information required by paragraph (c)(4) of this section, shall be made by each U.S. person when at any time after January 1, 1963:

(i) Such person acquires (whether in one or more transactions) outstanding stock of such foreign corporation which has, or which when added to any such stock then owned by him (excluding any stock owned by him on January 1, 1963, if on that date he owned 10 percent or more in value of such stock) has, a value equal to 10 percent or more in value of the outstanding stock of such foreign corporation;

(ii) Such person, having already acquired the interest referred to in paragraph (b) of this section or in paragraph (c)(1)(i) of this section—

(a) Acquires (whether in one or more transactions) an additional 10 percent or more in value of the outstanding stock of such foreign corporation;

(b) Owns 10 percent or more in value of the outstanding stock of such foreign corporation when such foreign corporation is reorganized (as defined in paragraph (f)); or

(c) Disposes of sufficient stock in such foreign corporation to reduce his interest to less than 10 percent in value of the outstanding stock of such foreign corporation; or

(iii) Such person is, at any time after January 1, 1987, treated as a United States shareholder under section 953(c) with respect to a foreign corporation.

(2) Examples. The provisions of paragraph (c)(1) of this section may be illustrated by the following examples:

Example 1. (i) Facts. On January 15, 2014, A, a United States person, acquires 10% in value of the outstanding stock of M, a foreign corporation.

(ii) Results. A must file a return under the provisions of paragraph (c)(1) of this section.

Example 2. (i) Facts. On January 1, 2014, B, a United States person, owns 4% in value of the outstanding stock of M, a foreign corporation. On February 1, 2015, B acquires an additional 6% in value of the outstanding stock of M Corporation.

(ii) Results. B is not required to file a return for 2014 under the provisions of this section because he does not own 10% or more in value of the outstanding stock of M Corporation. B must file a return for 2015 under the provisions of paragraph (c)(1) of this section.

Example 3. (i) Facts. On January 1, 2014, C, a United States person, owns 12% in value of the outstanding stock of M, a foreign corporation. On February 1, 2014, C acquires an additional 4% in value of the outstanding stock of M Corporation in a transaction not involving a reorganization.

(ii) Results. C is not required to file a return under the provisions of paragraph (c)(1) of this section with respect to the acquisition of the additional 4% of M Corporation.

Example 4. (i) Facts. The facts are the same as in Example 3 except that, in addition, on April 1, 2014, C acquires 4% in value of the outstanding stock of M Corporation in a transaction not involving a reorganization. (C's total holdings are now 20%.) On May 1, 2014, C acquires 2% in value of the outstanding stock of M Corporation.

(ii) Results. C is not required to file a return under the provisions of paragraph (c)(1) of this section as a result of the April 1, 2014, acquisition because he has not acquired 10% or more in value of the outstanding stock of M Corporation since he last became liable to file a return. C must file a return under the provisions of paragraph (c)(1) of this section as a result of the May 1, 2014, acquisition because C acquired 10% of the outstanding stock of M Corporation during 2014.

Example 5. (i) Facts. On June 1, 2014, D, a United States person, owns 24% in value of the outstanding stock of M, a foreign corporation. Also, on June 1, 2014, M Corporation is reorganized and, as a result of such reorganization, D owns only 12% of the outstanding stock of such foreign corporation.

(ii) Results. D must file a return under the provisions of paragraph (c)(1) of this section.

Example 6. (i) Facts. The facts are the same as in Example 5 except that, in addition, on November 1, 2015, D donates 4% of the outstanding stock of M Corporation to a charity.

(ii) Results. Since D has disposed of sufficient stock to reduce his interest in M Corporation to less than 10% in value of the outstanding stock of such corporation, D must file a return under the provisions of paragraph (c)(1) of this section.

(3) *Shareholders who become U.S. persons*. A return on Form 5471, containing the information required by paragraph (c)(4) of this section, shall be made by each person who at any time after January 1, 1963, becomes a U.S. person while owning 10 percent or more in value of the outstanding stock of such foreign corporation.

(4) *Information required to be shown on return*—(i) *In general*. The return on Form 5471, required to be filed by persons described in paragraph (c)(1) or (3) of this section, shall

set forth the same information as is required by the provisions of paragraph (b) of this section except that where such provisions require information with respect to January 1, 1963, such information shall be furnished with respect to the date on which liability arises to file the return required under this paragraph.

(ii) *Additional information.* In addition to the information required under paragraph (c)(4)(i) of this section, the following information shall also be furnished in the return required under this paragraph:

(a) The date on or after January 1, 1963, if any, on which such shareholder (or shareholders) last filed a return under this section with respect to the corporation;

(b) If a return is filed by reason of becoming a United States person, the date the shareholder became a United States person;

(c) If a return is filed by reason of the disposition of stock, the date and method of such disposition and the person to whom such disposition was made; and

(d) If a return is filed by reason of the organization or reorganization of the foreign corporation on or after January 1, 1963, the following information with respect to such organization or reorganization:

(1) A statement showing a detailed list of the classes and kinds of assets transferred to the foreign corporation including a description of the assets (such as a list of patents, copyrights, stock, securities, etc.), the fair market value of each asset transferred (and, if such asset is transferred by a United States person, its adjusted basis), the date of

transfer, the name, address, and identifying number, if any, of the owner immediately prior to the transfer, and the consideration paid by the foreign corporation for such transfer;

(2) A statement showing the assets transferred and the notes or securities issued by the foreign corporation, the name, address, and identifying number, if any, of each person to whom such transfer or issue was made, and the consideration paid to the foreign corporation for such transfer or issue; and

(3) An analysis of the changes in the corporation's surplus accounts occurring on or after January 1, 1963.

(iii) *Exclusion of information previously furnished.* In any case where any identical item of information required to be filed under this paragraph by a shareholder with respect to a foreign corporation has previously been furnished by such shareholder in any return made in accordance with the provisions of this section, such shareholder may satisfy the requirements of this paragraph by filing Form 5471, identifying such item of information, the date furnished, and stating that it is unchanged.

\* \* \* \* \*

(e) \* \* \*

(5) [Reserved]. For further guidance see §1.6046-1T(e)(5).

\* \* \* \* \*

(f) \* \* \*

(4) [Reserved].

\* \* \* \* \*

(l) Effective/applicability date—(1) \* \* \*

(2) Paragraph (c)(1)(iii) of this section applies to taxable years ending after

**[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Par. 11. Section 1.6046-1T is added to read as follows:

§1.6046-1T Returns as to organizations or reorganizations of foreign corporations and as to acquisitions of their stock (temporary).

(a)(1) through (e)(4). [Reserved]. For further guidance, see §1.6046-1(a)(1) through (e)(4).

(5) Persons excepted from furnishing items of information. Any person required to furnish any item of information under paragraph (b) or (c) of this section with respect to a foreign corporation may, if such item of information is furnished by another person having an equal or greater stock interest (measured in terms of value of such stock) in such foreign corporation, satisfy such requirement by filing a statement with his return on Form 5471 indicating that such liability has been satisfied and identifying the return in which such item of information was included. This paragraph (e)(5) does not apply to persons excepted from filing a return by reason of the provisions of paragraph (e)(4) of this section.

(f) (1) through (l)(2). [Reserved]. For further guidance, see §1.6046-1(f)(1) through (l)(2).

(3) Paragraph (e)(5) of this section applies to returns filed on or after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. See paragraph (e)(5) of §1.6046-1, as contained in 26 CFR part 1 revised as of April 1,

2012, for returns filed before **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT  
IN THE FEDERAL REGISTER]**.



(m) Expiration date. Paragraph (e)(5) of this section expires on or before  
**[INSERT DATE THREE YEARS AFTER DATE THIS DOCUMENT IS FILED WITH  
THE OFFICE OF THE FEDERAL REGISTER].**

John Dalrymple

Deputy Commissioner for Services and Enforcement.

Approved: December 12, 2013

Mark J. Mazur  
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013-30847 Filed 12/30/2013 at 8:45 am;

Publication Date: 12/31/2013]